

**NEBRASKA REAL PROPERTY APPRAISER BOARD
CONFERENCE ROOM “F”, LOWER LEVEL
NEBRASKA STATE OFFICE BUILDING
301 CENTENNIAL MALL SOUTH, LINCOLN, NE**

September 18, 2014 Meeting Minutes

A. OPENING

Chairman Philip Barkley called to order the September 18, 2014 meeting of the Nebraska Real Property Appraiser Board at 9:00 a.m., in conference room “F” located on the lower level of the Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska.

B. NOTICE OF MEETING

Chairman Barkley announced the notice of the meeting was duly given, posted, published and tendered in compliance with the Open Meetings Act, and all board members received notice simultaneously by email. Publication of official notice of the meeting appeared in the September 16, 2014 edition of the *Lincoln Journal Star*, a legal newspaper of general circulation in this state, as required by the Open Meetings Act. The agenda was kept current in the Nebraska Real Property Appraiser Board office and on the Board’s website. Materials generally used by the Board for this meeting were available in the public folder for inspection by the public, and in accordance with the Open Meetings Act. A copy of the Open Meetings Act was available for the duration of the meeting. For the record, Board Members Philip Barkley, Tom Kubert, Larry Saxton, Marc Woodle, and Chris Langemeier were present. Also present were Director, Tyler Kohtz, Compliance and Education Specialist, Anthony Dreesen, and Business and Licensing Specialist, Natasha Olsen.

ADOPTION OF THE AGENDA

Chairman Barkley reminded those present for the meeting that the agenda cannot be altered 24 hours prior to the meeting except for emergency items according to the Open Meetings Act. Board Member Kubert moved to adopt the agenda as printed. Board Member Woodle seconded the motion. With no further discussion, the motion carried with Saxton, Kubert, Langemeier, Woodle and Barkley voting aye.

The Nebraska Real Property Appraiser Board will meet in executive session for review of applicants and enforcement matters.

Board Member Kubert moved that the Board go into executive session for the purpose of reviewing applicants for credentialing, applicants for appraisal management company registration, investigations, and other sensitive matters. A closed session is clearly necessary to prevent needless injury to the reputation of those involved. The time on the meeting clock was 9:02 a.m. Board Member Langemeier seconded the motion. The motion carried with Woodle, Saxton, Langemeier, Kubert and Barkley voting aye.

Break from 10:17 a.m. to 10:38 a.m.

Board Member Kubert moved to come out of executive session at 12:00 p.m. Board Member Langemeier seconded the motion. The motion carried with Saxton, Woodle, Langemeier, Kubert and Barkley voting aye.

G. WELCOME AND CHAIR'S REMARKS

Chairman Barkley welcomed the general public, board members and staff. Diane Moore was the only public member in attendance.

H. BOARD MEETING MINUTES

1. APPROVAL OF AUGUST 21, 2014 MEETING MINUTES

Chairman Barkley asked for any additions or corrections to the August 21, 2014 minutes. Member Kubert brought attention to the actions for investigations 14-22, 14-23, 14-24, 14-26, and 14-27 under Section E on Pages 9 through 11, and indicated that the costs the Respondent is responsible for related to future Standard 3 reviews is \$875.00 and not \$450.00. Member Kubert also stated that "send advisory letter" should be removed from the action for I14-18 under Section F on Page 12. Director Kohtz informed the Board that these corrections will be made. Board Member Kubert moved to adopt the August 21, 2014 meeting minutes as amended. Board Member Woodle seconded the motion. The motion carried with Saxton, Langemeier, Woodle, Kubert and Barkley voting aye.

2. AMENDMENT OF JUNE 19, 2014 MEETING MINUTES

Director Kohtz brought attention to an error in the June 19, 2014 minutes. Applicant "CR14014" should be "CR14010" under Section C on Page 8. Members Kubert and Barkley confirmed that "CR14010" is correct. Board Member Kubert moved to amend the June 19, 2014 meeting minutes as presented. Board Member Langemeier seconded the motion. The motion carried with Kubert, Woodle, Langemeier, Saxton and Barkley voting aye.

I. DIRECTOR'S REPORT

Director Kohtz presented twelve charts outlining the number of appraisers and AMCs as of September 18, 2014. The Director summarized each chart and reported the number of appraisers as follows: 77 total Licensed, 73 resident and 4 reciprocal; 225 total Certified Residential, 179 resident and 46 reciprocal; 396 total Certified General, 254 resident and 142 reciprocal; and 5 Registered for a total of 703 appraisers. The total number of appraisers is up 4 from August 2014, and up 13 from September 2013. The Director also informed the Board that there are 51 Trainees, which is down 2 from August, and up 41 from September 2013.

In addition, the Director addressed the number of temporary permits issued. There were 13 permits issued in August compared to 18 permits issued in July. As of August 31, 2014, 80 temporary permits have been issued for the calendar year. August was the second straight month with ten or more temporary permits issued; however, the number of permits is still trailing the previous three years. Finally, Director Kohtz reported 110 AMCs registered, and one new AMC application has been submitted since the last meeting.

J. FINANCIAL REPORT – SEPTEMBER 2014

The receipts and expenditures for August were reviewed by the Director by line item with the Board. Director Kohtz provided details related to some specific August expenses. For the Real Property Appraiser Program, which includes both the appraiser fund and the AMC fund, a total of \$27,854.76 in expenditures and \$8,608.38 in revenues were reported. As of the end of August, expenses amount to 15.20 percent of the budgeted expenditures for the fiscal year; 16.99 percent of the fiscal year has passed. Finally, Director Kohtz presented three charts outlining the Agency twelve month expenses and revenues, historic cash balance, and twelve month cash balance.

Board Member Kubert moved to accept and file the August 2014 budget reports for audit. Board Member Woodle seconded the motion. The motion carried with Langemeier, Saxton, Woodle, Kubert and Barkley voting aye.

K. GENERAL PUBLIC COMMENTS

Chairman Barkley asked for any public comments. With no comments, the Chairman proceeded to education.

L. EDUCATION

Board Member Kubert moved to approve the following education and instructor requests as listed:

New Continuing Education Activities and Instructors

1. Alterra Group, LLC
 - a. Appraisal of Single Family Residential New Construction (C21438-I) /6 Hours
 1. David Phillips

New Supervisor/Trainee Education Activities and Instructors

1. The Moore Group
 - a. Training course for Supervisory Appraisers and Trainee Appraisers (ST21439)/7 Hours
 1. Bradford Moore
 2. Diane Moore

Continuing Education Instructors Approval

1. Mid-West Appraisers Association
 - a. National USPAP Update 2014-2015 (C21401)
 1. John W. Seuntjens

Qualifying Education Instructors

1. Trans-American Institute of Professional Studies, Inc.
 - a. The Approaches to Value (QE21340)
 1. John W. Seuntjens

Seconded by Saxton. Chairman Barkley called for the vote. The motion carried with Woodle, Langemeier, Kubert, Saxton and Barkley voting aye.

M. UNFINISHED BUSINESS

1. **OPEN 3RD CONGRESSIONAL DISTRICT CERTIFIED REAL PROPERTY APPRAISER REPRESENTATIVE POSITION:** Director Kohtz requested approval for a Memo From the Board concerning the 3rd Congressional District Certified Real Property Appraiser position that will be open after Board Member Barkley's term expires. With no further discussion, Board Member Kubert made a motion to approve the Memo From the Board to notify appraisers of the open 3rd Congressional District Certified Real Property Appraiser position. Seconded by Langemeier. The motion carried with Saxton, Kubert, Woodle, Langemeier and Barkley voting aye.

N. NEW BUSINESS

- 1. NRPAB STANDARD 3 REVIEW FORM PROPOSAL:** Director Kohtz presented a proposal from Certified General Real Property Appraiser, Cay Lacey, to develop a new NRPAB Standard 3 Review Form. Board Member Woodle brought attention to the range of hours in the proposal, and indicated that eight to twenty-four was too wide. Board Member Barkley and Kubert suggested that the range appears to be safe considering that the actual amount of work is unknown at this time. Board Member Woodle asked how a proposal is in front of the Board when the Board has had no previous discussion about this proposal. Board Member Barkley responded that the Board has been discussing the redevelopment of the Standard 3 Review Form for quite some time. Director Kohtz brought attention to the process, and took the blame for the lack of a formal Board discussion prior to soliciting the proposal from Ms. Lacey. The Director continued by saying that the Board has considered this for quite some time, and after discussions with Board Member Kubert, he requested that Ms. Lacey submit a proposal for the Board to consider at the September meeting to establish a basis for conversation; at no time was this to be considered the final or only option.

The conversation then turned back to the proposal. Board Member Saxton asked how Ms. Lacey is to know what the Board would like to see in the form, and asked to be a part of any committee established to develop this form. Board Member Woodle expressed concern that a form could be developed, and the Board dislikes it, then another draft is developed; this could get very expensive. Board Member Woodle followed by asking if the Board needs to research forms used by other states prior to approving Ms. Lacey's proposal. Board Member Barkley reminded the Board that it has already established the type of format that it would like to see. Director Kohtz suggested that Ms. Lacey could be invited to the October meeting to discuss the Board's wishes. All the board members agreed that Ms. Lacey is fully capable and qualified to develop the form. Board Member Saxton stated that Ms. Lacey is perfect to carry out this assignment, and made a motion to approve Ms. Lacey's proposal as submitted. Director Kohtz asked if any preliminary work should be done prior to approval. Director Kohtz followed by saying that he will work with Ms. Lacey to ensure that the Board's wishes are carried out (motion still on the table). The motion was seconded by Kubert. Chairman Barkley called for the vote. Woodle voted nay, Langemeier, Kubert, Saxton and Barkley voted aye. The motion passed with four votes.

Board Member Kubert moved that the Board go back into executive session for the purpose of reviewing investigative matters. A closed session is clearly necessary to prevent needless injury to the reputation of those involved. The time on the meeting clock was 12:35 p.m. Board Member Woodle seconded the motion. The motion carried with Saxton, Woodle, Langemeier, Kubert and Barkley voting aye.

William G. Blake appeared before the Board

Board Member Kubert moved to come out of executive session at 1:15 p.m. Board Member Langemeier seconded the motion. The motion carried with Woodle, Saxton, Langemeier, Kubert and Barkley voting aye.

2. **CURRENT SUPERVISORY APPRAISER REQUIREMENTS:** Any certified real property appraiser approved as a Supervisory Appraiser after January 1, 2015 is required to complete the 7-Hour Supervisory Appraiser and Trainee Course. The Board has had previous discussions concerning the number of credentialing applicant appraisal reports found to not be in substantial compliance with USPAP, and the Supervisory Appraiser's responsibilities concerning these reports. While preparing for this discussion, Director Kohtz asked Assistant Attorney General Hart if the Board could require the course for Supervisory Appraisers in a current relationship with a Trainee Real Property Appraiser. Director Kohtz presented his discussion with AAG Hart to the Board for review, and reported that the above mentioned option is not a possibility. Board Member Kubert suggested that the Board strongly encourage the existing Supervisory Appraisers to complete this course. Each Supervisory Appraiser would receive continuing education credit, so the incentive is there. Board Member Kubert continued by saying that it is also important to inform the Supervisory Appraisers that the expectations and standards are changing; they need to be aware of their responsibilities. All the board members agreed with Board Member Kubert's assessment. Board Member Kubert made a motion to send each Supervisory Appraiser a letter informing him or her of the Board's expectations, the appraiser's requirements as a Supervisory Appraiser, and encouraging the Supervisory Appraiser to complete the 7-Hour Supervisory Appraiser and Trainee Course. The motion was seconded by Langemeier, and carried with Saxton, Woodle, Kubert, Langemeier and Barkley voting aye.
3. **APPRAISER BUZZ ARTICLE – WHY ARE THESE COMPANIES SUING APPRAISERS:** Director Kohtz presented the Appraisal Buzz article titled "Why Are These Companies Suing Appraisers?" to the Board's attention. Director Kohtz reminded the Board of the March 28, 2014 Memo From the Board concerning an organization sending allegedly fraudulent letters to appraisers in the State of California. The organization in this article is the same addressed in the March 28th memo. The Appraisal Buzz article reports that this organization is purchasing foreclosed loans then filing lawsuits against the appraisers that performed the appraisals for the lenders years ago. So far, the organization has not been successful. Director Kohtz indicated that he expects no action from the Board, but found the connection interesting. The Board agreed.
4. **SOS TEMPORARY EMPLOYMENT FOR RENEWALS:** Director Kohtz presented the State of Nebraska general job description for the Secretary I classification, and requested approval for part-time temporary staffing from October through January for 20 hours per week to assist with renewals. Director Kohtz was asked what the temporary employee would do. Director Kohtz indicated that this employee would assist with daily office tasks, answer phones, pull files, organize files, file files, and take on any other duties requested by the Director. The Board indicated that this is a good decision to help ease the burden on permanent staff during renewals. Board Member Woodle made a motion to approve hiring a Secretary I classification part-time temporary employee from October 1, 2014 through January 31, 2015. The motion was seconded by Langemeier, and carried with Saxton, Kubert, Woodle, Langemeier and Barkley voting aye.

O. LEGISLATIVE REPORT AND BUSINESS

1. **LR499:** Director Kohtz informed the Board that he and Bill Marienau have finalized the draft of the follow up to LB685. The Director will send the draft to each board member tomorrow and discussion will take place at the October meeting. Director Kohtz also anticipates having a plan to address the opposition to LB685 ready to present to the Board in October.
2. **TITLE 298:** Director Kohtz informed the Board that the redevelopment of only two chapters remains, and that he anticipates the Board's first review at the November meeting.

P. BOARD POLICIES AND PROCEDURES

1. BOARD POLICIES

- a. Current Board Policies:** No discussion.

2. APPRAISER FORMS AND PROCEDURES

- a. Procedure for Applicant Appraisal Review:** A discussion took place concerning the procedure for review of the appraisal reports submitted to the Board by applicants for credentialing, and review of the Standard 3 reviews of those appraisal reports. The Board has made changes to the current review form putting the determination of overall USPAP compliance of an appraisal report in the Board's scope, which means that the Board must conduct a more thorough review of the appraisal reports and Standard 3 reviews of those reports. The Board concluded that a board member should be assigned to each new applicant when the Board conducts its first review of the applicant's qualifications. The assigned board member will be responsible for conducting a thorough review of the submitted appraisal report and any Standard 3 review of that report. The assigned board member will present his or her findings to the Board for consideration. In addition, the assigned board member will be responsible for conducting any advisory meetings with the applicant.

Q. OTHER BUSINESS

1. BOARD MEETINGS – No discussion.

2. CONFERENCES/EDUCATION

- a. Dreesen Report on CLEAR Basic National Certified Investigator and Instructor Training:** Compliance and Education Specialist Dreesen attended CLEAR Basic National Certified Investigator and Instructor Training from September 8th through 10th in New Orleans, Louisiana. Mr. Dreesen provided a report to the Board, and informed the Board that the training helped develop confidence concerning proper investigation procedures. Mr. Dreesen specifically mentioned learning about proper de-escalation techniques, goals and objectives in a good investigation, administrative law, hearing expectations, testimony, and proper evidence collection.

3. MEMOS FROM THE BOARD

- a. Disclosure of Personal Interest with Respect to Parties Involved:** A discussion took place regarding the Memo From the Board titled "Disclosure of Personal Interest With Respect to Parties Involved" released on August 27, 2014. Board Member Saxton expressed dissatisfaction with the lack of detail in the memo. Board Member Saxton went on to say that not all situations in which an appraiser is employed by a bank needs to be disclosed. The memo leads one to believe that any employee of any bank would need to disclose the relationship in the appraisal report when acting in a capacity as a real property appraiser and the bank is involved with the loan transaction. Board Member Woodle stated that the memo was to bring attention to situations in which an appraiser may be wearing two hats. If an appraiser that is an employee of a bank completes an appraisal report used by the bank for a loan transaction, then the appraiser needs to disclose his or her relationship in the report. Board Member Woodle also added that there are many situations that may need to be disclosed, and the purpose of the memo was not to name them, but to bring attention to the fact that certain relationships need to be disclosed. Chairman Barkley indicated that, under USPAP, an appraiser must disclose any current or prospective interest in the subject property or parties involved. If an appraiser is employed by one of the parties involved, then the appraiser has an interest in that party. Chairman Barkley also reminded the Board that if a member is not satisfied with the content of a memo, the board member needs to ask that it is held to the next month's meeting agenda.

4. APPRAISAL FOUNDATION

- a. First Exposure Draft of a Proposed Interpretation of the 2015 Real Property Appraiser Qualification Criteria:** Director Kohtz presented the “First Exposure Draft of a Proposed Interpretation of the 2015 Real Property Appraiser Qualification Criteria” concerning qualification criteria for members of the armed services to the Board for review. No further discussion took place.
- b. Third Exposure Draft of a Proposed Revision to the 2015 Real Property Appraiser Qualification Criteria and Guide Note 9:** Director Kohtz presented the “Third Exposure Draft of a Proposed Revision to the 2015 Real Property Appraiser Qualification Criteria and Guide Note 9” concerning changes to background checks. A discussion took place regarding this exposure draft. Board Member Kubert brought attention to the fact that the original language, which was the basis for the Board’s language in LB717, is removed and replaced with a couple of sentences. Director Kohtz reminded the Board that The Appraisal Foundation also moved the background check requirement back to 2017, which was an interesting decision considering that most, if not all, states were in the process of getting legislation passed to address this requirement. Director Kohtz indicated that he did find the Guide Note 9 information useful. The Director went on to say that this is the first information received from the federal level regarding what to consider when reviewing criminal history information. Director Kohtz finished by saying that these proposed revisions will be monitored.

C. CONSIDERATION OF APPLICANTS AS NEBRASKA REAL PROPERTY APPRAISER:

Board Member Kubert moved to approve T14024 as a Trainee Real Property Appraiser. Woodle seconded the motion. The motion carried with Saxton, Langemeier, Woodle, Kubert and Barkley voting aye.

Board Member Kubert moved to take the following actions for applicants as listed:

L14004R / Approve as Licensed Residential Real Property Appraiser.

CR14017 / Request applicant to submit updated log to this date.

CR14018 / Approve to sit for exam; select and send three reports for review. Board Member Kubert assigned.

CR14016 / Approve to sit for exam, request applicant to submit updated log to this date, Board Member Saxton assigned and appointed to act on behalf of the Board to select three reports to send for review from updated log.

CG14033R / Approve as Certified General Real Property Appraiser.

CG14031R / Approve as Certified General Real Property Appraiser.

CG14032R / Approve as Certified General Real Property Appraiser.

CR13014 / Deny

CG14001 / Hold

CR14006 / Hold

CG14011 / Hold

CG14021 / Hold

CG14010 / Hold

CR14010 / Hold; Board Member Barkley assigned.

CG14015 / Send applicant redacted copies of Standard 3 reviews and request written response to each review. Board Member Langemeier assigned.

CR14011 / Approve as Certified Residential Real Property Appraiser; send advisory letter and redacted copies of Standard 3 reviews.

L14003 / Approve as Licensed Residential Real Property Appraiser.

CR14013 / Hold

Board Member Woodle seconded the motion. Motion carried with Langemeier, Kubert, Saxton, Woodle and Barkley voting aye.

D. REGISTRATION AS APPRAISAL MANAGEMENT COMPANY - None

E. CONSIDERATION OF DISCIPLINARY ACTIONS/ ENFORCEMENT MATTERS:

Vice Chair Kubert moved to take the following enforcement actions:

13-14 / Hold
13-15 / Hold

Board Member Woodle seconded the motion. Motion carried with Saxton, Langemeier, Woodle, Kubert and Barkley voting aye.

Vice Chair Kubert moved to take the following enforcement actions:

13-13 / Hold
13-23 / Hold
13-24 / Hold
13-25 / Hold
13-26 / Hold
14-15 / Hold
14-16 / Hold
14-17 / Hold
14-18 / Hold
14-19 / Hold
14-20 / Hold
14-29 / Hold

Board Member Woodle seconded the motion. Motion carried with Saxton, Kubert, Woodle and Langemeier voting aye. Barkley abstained.

Board Member Woodle moved to take the following enforcement actions:

12-24 / Close
12-29 / Close
13-18 / Hold
13-19 / Hold
14-22 / Authorize Special Assistant Attorney General Blake to file formal charges for violation of Neb. Rev. Stat. § 76-2237 and N.R.S. § 76-2238 (2), (4), (10), (13), (14), and (16).
14-23 / Authorize Special Assistant Attorney General Blake to file formal charges for violation of Neb. Rev. Stat. § 76-2237 and N.R.S. § 76-2238 (2), (4), (10), (13), (14), and (16).
14-24 / Authorize Special Assistant Attorney General Blake to file formal charges for violation of Neb. Rev. Stat. § 76-2237 and N.R.S. § 76-2238 (2), (4), (10), (13), (14), and (16).
14-25 / Hold
14-26 / Authorize Special Assistant Attorney General Blake to file formal charges for violation of Neb. Rev. Stat. § 76-2237 and N.R.S. § 76-2238 (2), (4), (10), (13), (14), and (16).

14-27 / Authorize Special Assistant Attorney General Blake to file formal charges for violation of Neb. Rev. Stat. § 76-2237 and N.R.S. § 76-2238 (2), (4), (10), (13), (14), and (16).

Board Member Langemeier seconded the motion. Motion carried with Saxton, Langemeier, Woodle and Barkley voting aye. Kubert abstained.

Vice Chair Kubert moved to take the following enforcement actions:

13-21 / Hold

Board Member Saxton seconded the motion. Motion carried with Langemeier, Saxton, Kubert and Barkley voting aye. Woodle abstained.

F. CONSIDERATION OF OTHER EXECUTIVE SESSION ITEMS:

Inquiry I13-4 was discussed.

Inquiry I14-22 was discussed.

The Board discussed violation of the terms of a consent agreement that a Nebraska credentialed appraiser entered into with the Board. Two reports requested by the Board for review, in accordance with the terms of the consent agreement, were found to not be in substantial compliance with USPAP. The Board assigned investigation number 14-31 to this matter for allegedly failing to comply with terms of a consent agreement.

The Board discussed four appraisal reports received at the Board's office in which the appraiser, whose signature appears on all four reports, may have been negligent in the development, preparation, and/or communication of each appraisal report. This appraiser may be in violation of Neb. Rev. Stat. § 76-2237 and N.R.S. § 76-2238 (16). The Board assigned investigation numbers 14-32 and 14-33 to two of the reports, and will hold the other two pending the findings of the newly assigned investigations.

The Board discussed disciplinary action taken by another jurisdiction against a Nebraska registered appraisal management company. No action taken.

Vice Chair Kubert moved to take the following actions for other executive session items:

I13-4 / Send letter to each Nebraska county identified by the Board inquiring about the individual's employment status with county.

I14-9 / Hold

I14-14 / Hold

I14-15 / Hold

I14-16 / Hold

I14-22 / Hold

Board Member Saxton seconded the motion. Motion carried with Woodle, Langemeier, Saxton, Kubert and Barkley voting aye.

Vice Chair Kubert moved to take the following actions for other executive session items:

14-31 / Open investigation.

14-32 / Open investigation for the alleged violation of Neb. Rev. Stat. § 76-2237 and N.R.S. § 76-2238 (16); request true copy of appraisal report and workfile, along with a written request to the allegations. Send appraisal report and workfile for Standard 3 review.

14-33 / Open investigation for the alleged violation of Neb. Rev. Stat. § 76-2237 and N.R.S. § 76-2238 (16); request true copy of appraisal report and workfile, along with a written request to the allegations. Send appraisal report and workfile for Standard 3 review.

Board Member Woodle seconded the motion. Motion carried with Saxton, Langemeier, Woodle, Kubert and Barkley voting aye.

Board Member Kubert made a motion to amend the previous motion to include “Board Member Woodle appointed as the Investigating Board Member” in the actions for 14-32 and 14-33. The motion was seconded by Woodle, and carried with Saxton, Langemeier, Woodle, Kubert and Barkley voting aye.

Board Member Kubert made a motion to authorize Special Assistant Attorney General Bill Blake to file formal charges against Respondent in investigation 14-31 for the alleged violation of Neb. Rev. Stat. § 76-2238 (20). The motion was seconded by Woodle, and carried with Langemeier, Saxton, Woodle, Kubert and Barkley voting aye.

R. ADJOURNMENT

Board Member Kubert moved to adjourn the meeting. Board Member Langemeier seconded the motion. Motion carried with Woodle, Langemeier, Saxton, Kubert and Barkley voting aye.

At 2:11 p.m. Chairman Barkley adjourned the September 18, 2014 meeting of the Real Property Appraiser Board.

Respectfully submitted,

Tyler N. Kohtz
Director

These minutes were available for public inspection on October 2, 2014, in compliance with Nebraska Statute §84-1413 (5).